



Environmental Management Consolidated Business Center (EMCBC)

**Subject: Handling Foreign Ownership, Control, or Influence (FOCI)
Submission**

Implementing Procedure

APPROVED: (Signature on File)

EMCBC Director

ISSUED BY: OFFICE OF CONTRACTS

1.0 PURPOSE

The purpose of this procedure is to establish the responsibilities for identifying and handling foreign ownership, control, or influence (FOCI) at the prime and subcontract level.

2.0 SCOPE

The scope of this procedure is to ensure that entities under foreign ownership, control or influence are not given access to classified information or special nuclear material when such access may result in the compromise of U.S. national security interests.

3.0 APPLICABILITY

All EMCBC personnel shall comply with this procedure.

4.0 REQUIREMENTS

4.1 10 Code of Federal Regulations (CFR) Part 710, Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Significant Quantities of Special Nuclear Material

4.2 Department of Energy (DOE) Manual 470.4-1, Chg 1, Safeguards and Security Program Planning and Management

4.3 DOE Manual 470.4-1, Chg 1, Safeguards and Security Program Planning and Management, Section H, Appendix 6 – FOCI Matrix Chart

4.4 DOE Order 470.4, Safeguards and Security Program

4.5 DOE Acquisition Regulation (DEAR) 904.7003, Foreign Ownership, Control, or Influence Over Contractors

5.0 DEFINITIONS – NOT APPLICABLE

6.0 RESPONSIBILITIES

6.1 Contract Specialist (CS)/Contracting Officer (CO):

- 6.1.1 When contemplating an award which requires a FOCI certification, or in the instance where an existing contractor will gain access requiring a FOCI certification, and where the potential awardee or contractor is an organization not possessing a current affirmative FOCI clearance determination, the CS/CO shall be responsible for providing the offeror/bidder/contractor/subcontractor (hereafter called the offeror”) with current guidelines for completing the Standard Form (SF) 328, Certificate Pertaining to Foreign Interests (Attachment A), a list of sensitive foreign nations, and a format for listing the organization’s officers and directors.
- 6.1.2 Insert the SF 328 in all solicitations in which contract performance requires personnel security clearances.
- 6.1.3 Forward all FOCI certifications to the DOE Cognizant Security Authority (CSA) at the time the competitive range for an acquisition is determined. This allows sufficient time to process any and all submitted FOCI certifications.
- 6.1.4 Obtain a favorable FOCI determination under a contract/subcontract subject to FOCI. Until a favorable FOCI determination is rendered, the CO is prohibited from awarding, extending, or modifying a contract, or exercising any options.
- 6.1.5 Document the results of an offeror’s FOCI certification in the official contract file by including it in the Price Negotiation Memorandum (PNM).

- 6.2 DOE CSA – is responsible for reviewing the FOCI information submitted by the EMCBC Office of Contracting (OOC).

7.0 GENERAL INFORMATION – NOT APPLICABLE

8.0 PROCEDURE

8.1 CS/CO Review of the FOCI Submission

- 8.1.1 Prior to submitting a completed FOCI package to the DOE CSA, the CS/CO shall review the submission to ensure that:
 - 8.1.1.1 The certificate has been signed and dated by an authorized official of the offeror;

- 8.1.1.2 The offeror's most recent annual report and its Securities and Exchange Commission 10K reports have been attached;
- 8.1.1.3 A list of the names of Key Management Personnel with their respective nationality has been attached;
- 8.1.1.4 A consolidated financial information report has been attached, if the offeror is a privately-owned company;
- 8.1.1.5 A parent organization FOCI package has been attached, if the offeror indicated it was owned by a parent organization. (Note: All tier levels of the parent organizations must provide the same information as the offeror.);
- 8.1.1.6 If any of these documents are missing, the CS/CO will advise the offeror that award cannot be made until all documents are furnished, and request that the offeror provide any missing data;
- 8.1.1.7 If the CSA determines that a FOCI situation exists, the CS/CO shall request that the offeror submit a plan of action to avoid or mitigate the FOCI issue.

8.2 CSA Action Plan

- 8.2.1 Based upon the EMCBC OOC's review of the FOCI information, the CSA shall initiate the following actions:
 - 8.2.1.1 Determine the degree and extent of FOCI over the offeror or subcontractor;
 - 8.2.1.2 Prepare a written response to the EMCBC OOC, providing the rationale for the determination and stating that there should/should not be restrictions made on the offeror which will be included in the official contract file.
 - 8.2.1.3 In the case of a determination that there should be restrictions, the CSA will review the offeror's plan of action and determine its acceptability. If acceptable, the plan of action shall be made part of the contract requirements. If unacceptable, the CSA will recommend that the offeror not be considered for contract award, and/or that affected contracts with a contractor be terminated.

9.0 RECORDS MAINTENANCE

- 9.1 IP-540-04-F1, Standard Form (SF) 328, "Certificate Pertaining to Foreign Interests"

10.0 FORMS USED

10.1 Forms used shall be the latest revision unless otherwise stated.

10.1.1 Standard Form (SF) 328, “Certificate Pertaining to Foreign Interests”

11.0 ATTACHMENT

11.1 Attachment A –Standard Form (SF) 328, “Certificate Pertaining to Foreign Interests”
[Standard Form 328 \(revised 6/2008\) Certificate Pertaining to Foreign Interests](#)

CERTIFICATE PERTAINING TO FOREIGN INTERESTS <i>(Type or print all answers)</i>		<small>OMB No. 0704-0194</small> <small>OMB approval expires</small> <small>May 31, 2011</small>
PLEASE DO NOT RETURN YOUR FORM TO THE ORGANIZATION IN THE PARAGRAPH BELOW. RETURN COMPLETED FORM TO YOUR RESPECTIVE COGNIZANT SECURITY OFFICE. <small>The public reporting burden for this collection of information is estimated to average 70 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Department of Defense, Washington Headquarters Services, Executive Service Directorate, Information Management Division, 1155 Defense Pentagon, Washington, DC 20301-1155 (0704-0194). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</small>		
PENALTY NOTICE		
Failure to answer all questions or any misrepresentation (by omission or concealment, or by misleading, false or partial answers) may serve as a basis for denial of clearance for access to classified information. In addition, Title 18, United States Code 1001, makes it a criminal offense, punishable by a maximum of five (5) years imprisonment, \$15,000 fine	or both, knowingly to make a false statement or representation to any Department or Agency of the United States, as to any matter within the jurisdiction of any Department or Agency of the United States. This includes any statement made herein which is knowingly incorrect, incomplete or misleading in any important particular.	
PROVISIONS		
<div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> 1. This report is authorized by the Secretary of Defense, as Executive Agent for the National Industrial Security Program, pursuant to Executive Order 12829. While you are not required to respond, your eligibility for a facility security clearance cannot be determined if you do not complete this form. The retention of a facility security clearance is contingent upon your compliance with the requirements of DoD 5220.22-M for submission of a revised form as appropriate. </div> <div style="width: 48%;"> 2. When this report is submitted in confidence and is so marked, applicable exemptions to the Freedom of Information Act will be invoked to withhold it from public disclosure. 3. Complete all questions on this form. Mark "Yes" or "No" for each question. If your answer is "Yes" furnish in full the complete information under "Remarks." </div> </div>		
QUESTIONS AND ANSWERS		
1. (Answer 1a. or 1b.) a. (For entities which issue stock): Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5 percent or more of the outstanding shares of any class of your organization's equity securities? b. (For entities which do not issue stock): Has any foreign person directly or indirectly subscribed 5 percent or more of your organization's total capital commitment?	YES	NO
2. Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10 percent or more of any foreign interest?		
3. Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials?		
4. Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization?		
5. Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)?		
6. Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)?		
7. During your last fiscal year, did your organization derive: a. 5 percent or more of its total revenues or net income from any single foreign person? b. In the aggregate 30 percent or more of its revenues or net income from foreign persons?		
8. Is 10 percent or more of any class of your organization's voting securities held in "nominee" shares, in "street names" or in some other method which does not identify the beneficial owner?		
9. Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)?		
10. Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization?		

STANDARD FORM 328 (Revised 6/2008)

PREVIOUS EDITION IS OBSOLETE.

Reset

Adobe Professional 7.0

REMARKS <i>(Attach additional sheets, if necessary, for a full detailed statement.)</i>	
CERTIFICATION	
<p>I CERTIFY that the entries made by me above are true, complete, and correct to the best of my knowledge and belief and are made in good faith.</p> <p>WITNESSES: _____</p> <p style="text-align: right;">_____ <i>(Date Certified)</i></p> <p>By _____</p> <p style="text-align: right;">_____ <i>(Signature of Authorized Contractor Representative)</i></p> <p>_____</p> <p style="text-align: right;">_____ <i>(Typed Name of Contractor)</i></p> <p><i>NOTE: In case of a corporation, a witness is not required but the certificate below must be completed. Type or print names under all signatures.</i></p> <p style="text-align: right;">_____ <i>(Title of Authorized Contractor Representative)</i></p> <p style="text-align: right;">_____ <i>(Address)</i></p> <p><i>NOTE: Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.</i></p>	
CERTIFICATE	
<p>I, _____, certify that I am the _____</p> <p>of the corporation named as Contractor herein; that _____</p> <p>who signed this certificate on behalf of the Contractor, was then _____</p> <p>of said corporation; that said certificate was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.</p> <p style="text-align: center;">_____ <i>(Corporate Seal)</i></p> <p style="text-align: right;">_____ <i>(Signature and Date)</i></p>	

STANDARD FORM 328 (BACK) (Revised 6/2008)

EMCBC RECORD OF REVISION**DOCUMENT - Handling Foreign Ownership, Control, or Influence (FOCI) Submission**

If there are changes to the controlled document, the revision number increases by one. Indicate changes by one of the following:

- I Placing a vertical black line in the margin adjacent to sentence or paragraph that was revised.
- I Placing the words GENERAL REVISION at the beginning of the text.

Rev. No.	Description of Changes	Revision on Pages	Date
1	Original Issue	All	06/26/06
	Reviewed/No Changes Required		05/18/12